

PLEADINGS

U.S. District Court
Attn: Clerk's Office

FILED
1/2/2024

EW

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

Amazon Moru Studio

V.

Plaintiff,

Emoji Company GmbH

Defendant,

CaseNo.:1:23-cv-14925

Honorable John F. Kness

Dear Sir or Madam,

I hope this email finds you well. My name is Rosa Lee, the owner of Moru Studio operates the business as the Individual. I am the Defendant in the case referenced above. I am writing to formally oppose the motion for a preliminary injunction filed by Emoji Company GmbH. I understand that the Court has taken the motion under advisement and will consider the motion unopposed if no objection is raised by any Defendant on or before January 2, 2024, as stated in the Court's Minute Order [Dkt. No. 67]. In response to Plaintiff's claims outlined in the complaint, I present my opposition to three primary allegations and would like to highlight the following key points:

Firstly, Trademark Infringement and Counterfeiting:

a. Use of Common Terminology: The term "emoji" is widely recognized as a common noun, referring to a simple graphic representation used in digital communication to convey emotions, states, or various concepts, as described on Wikipedia. This term is treated as a generic noun with a universal meaning, as evidenced by its common usage in everyday language and its representation in various digital icons. The Defendant created and sold hoop earrings featuring smiling faces, using the term with a title "Smiley Face Hoop Earring • Happy Face Emoji Earrings" (file 1) to describe the product's smiling face in its general, non-trademarked sense. The use of the term was not intentional infringement on the Plaintiff's trademark rights or an attempt to gain undue advantage or produce counterfeit goods. The Defendant was unaware of the term "emoji" being a trademark and used it as a common noun for product description purposes.

b. Distinctive Product Features: The Defendants' Smiling Face Hoop Earrings, exemplified by the attached images (file 2), distinctly feature a smiling face with three black lines and small lines at the corners of the mouth, differentiating them from Emoji Company GmbH's offerings.

c. Limitation of Trademark Rights: To the best of my knowledge, the Plaintiff initially filed the lawsuit in the United States Northern District Court of Illinois on October 16, 2023, and submitted a trademark application for the jewelry sector on October 19, 2023, as evidenced by The United States Patent and Trademark Office (USPTO) (Serial Number: 98230525), and attached file 10. However, as of December 1 (the date when the defendant was first notified about the complaint by Amazon), the status of trademark number 98230525 was PENDING, making it ineffective for jewelry. In other words, this confirms that Emoji Company GmbH's trademark rights were restricted to non-jewelry categories as of December 1, 2023. Given that the listing containing the term 'emoji' was permanently removed on November 15, 2023, and the Plaintiff's trademark for the jewelry sector was neither live nor registered at that time, the Defendant asserts that the earrings fell outside the scope of the Plaintiff's trademark protection. I have attached the confirmation email from Amazon regarding the product removal (file 3).

In summary, the products exhibit distinctive features, the term "emoji" was used in its general sense. Furthermore, at the time of filing the lawsuit and the application for a preliminary injunction, the plaintiff did not have trademark rights effective in the jewelry sector. Moreover, considering that

the disputed products were removed on November 15, the claims of trademark infringement made by the plaintiff are unwarranted.

Secondly, Misrepresentation of Origin: Plaintiff's claims that defendants are accused of inaccurately labeling the origin of counterfeit products, leading to consumer confusion and instigating legal action for misrepresentation of origin. The earrings were handmade by the Defendant, operating a store on Amazon named "Moru Studio." All of our products on Amazon including the earrings, the accurate origin, "South Korea", was clearly specified, debunking claims of misrepresentation.

Thirdly, Deceptive Trade Practices Violation:

The Plaintiff contends that the Defendants misled consumers into perceiving their online store as an official sales channel of the Plaintiff through deceptive means such as imitating website layouts, logos, and payment methods. However, there is no evidence to suggest that the Defendant has engaged in the sale or distribution of counterfeit products bearing Emoji Company GmbH's trademarks. The attached document of Moru Studio shop front page (file 4) clearly demonstrate that the Defendant operates under the distinct brand name "Moru Studio".

a. Identity Transparency: The Defendant operates a single online store, transparently disclosing the proprietor's identity as Rosa Lee, in accordance with all legal requirements. Attached screenshots further validate consistent identity on the market place (file 5).

b. Amazon Compliance: In adherence to the recent INFORM Consumers Act, the Defendant submitted comprehensive personal information to Amazon for verification, including name, government-issued identification, business address, bank details, email, phone number, and tax identification. Verification completion and ongoing Amazon account health rate are evidenced in the attached documentation (file 6). If necessary, the Defendant is willing to request verification completion documentation from Amazon and submit it as proof under the INFORM Consumers Act.

c. Positive Feedback from Customers: On April 21, 2016, the Defendant first opened the Amazon store to sell products (file 7). The Defendant have been operating an Amazon store for the past eight years, building relationships with customers and maintaining transparent transactions, resulting in positive reviews and feedback, as evidenced by file 8. The Defendant has consistently adhered to all relevant trade practices for the past 8 years and has not engaged in deceptive trade practices, or conducting secretive transactions by hiding one's identity, as alleged by Emoji Company GmbH.

Lastly, the Defendant's total sales from the relevant product (Amazon ASIN: B0BRJ4D5XX), inclusive of shipping charges, amount to \$78 USD, as shown in the attached screenshot (file 9). Considering the modest sales figures and the limited impact on prominence, it is crucial to carefully evaluate the alleged trademark infringement. It is also important to note that the listings in question had been removed on November 15, predating the Plaintiff's initial legal notice of December 21st. Despite having already removed the listings, the plaintiff submitted a complaint against us on Amazon, resulting in the Defendant not receiving any funds since December 1st.

The Defendant's Amazon account is the sole business, and the hold on it has caused significant financial difficulties. Your consideration of this matter would be greatly appreciated.

In light of this incident, I, the Defendant, acknowledge that 'emoji' is a registered trademark, and I am aware of its legal status. I hereby commit that, moving forward, I will refrain from using the term 'emoji' in any manner that may infringe upon or violate its trademark rights. The Defendant kindly requests that the Court consider the Defendant's objections and takes them into account when making a decision regarding the preliminary injunction. I have uploaded all relevant PDF documents via the Court's public website to provide supporting evidence for my claims. If the Court requires any further information or clarification, I am more than willing to provide it promptly. Thank you for your attention to this matter. I trust that the court will carefully consider the objections and evidence presented in reaching a fair decision.

Sincerely,

Rosa Lee

Morustudio@gmail.com

8 Baekseokdong 1-gil

Jongno-gu, Seoul 03032

South Korea

File_1_The Product Listing Page Screenshot_23-cv-14925_Amazon_Moru Studio

amazon

Deliver to Jade Miami 33132

Handmade

Search Amazon

EN

Hello, Jade

Account & Lists

Orders

Cart

All

Medical Care & Pharmacy

Back to School

Off to College

Customer Service

Amazon Basics

Today's Deals

Buy Again

Amazon Business

Household, Health & Baby Care

Livestreams

Free Shipping

Beauty & Personal Care

handmade

Gifts

Jewelry

Home & Kitchen

Clothing, Shoes & Accessories

Wedding

Sell on Handmade

Korean Finger Heart Stud Earrings Minimalist Earrings Stud Jewelry Dainty Hollow Heart and Love Pendant Earrings Cute Silver Jewelry Stud

\$14.99


prime

Subtotal

\$11.99

Go to Cart

Handmade Products > Jewelry > Earrings > Hoop



Roll over image to zoom in

1

2

3

4

5

6

7

8

9

10

Smiley Face Hoop Earrings • Happy Face Emoji Earrings • Gold Silver Hoops • Smile Face Dangle Earrings in Stainless Steel • Gift for Her 284

Brand: Moru Studio

\$14.99


Customizable

Customize & Add to Cart

By clicking "Customize", you agree to these Terms and Conditions.

Hoops are strung with playful smiley faces that are sure to brighten your day! Perfect gift idea for your loved ones.

- A pair of sweet putty smiley face disc hoop earrings
- Hoop size: 15mm / Smile face size: 10 mm
- Base material: Stainless Steel (clean, durable, corrosion resistant). Available in gold and silver finish over stainless steel, 925 sterling silver posts, Nickel Free, Hypoallergenic, Anti-tarnishing.
- Sold as a PAIR
- Each pair comes in a lovely gift box, ready for gifting.



Moru Studio


Personalized Handmade Jewelry in Republic of Korea

Contact me with general inquiries

Ask about a custom order

Are you a Maker?

Apply to join Amazon Handmade



14K Gold Plated Earrings for Women Round Natural Hetian Jade Ball...

4.5 stars 281

\$29.99

prime

Save 10% with coupon

\$14.99

\$5.49 delivery August 30 - September 15 Details

Deliver to Jade - Miami 33132

In Stock

This product needs to be customized before adding to cart.

Payment

Secure transaction

Ships from

Moru Studio

Sold by

Moru Studio

Returns

Eligible for Refund or Replacement if damaged or defective

Add to List

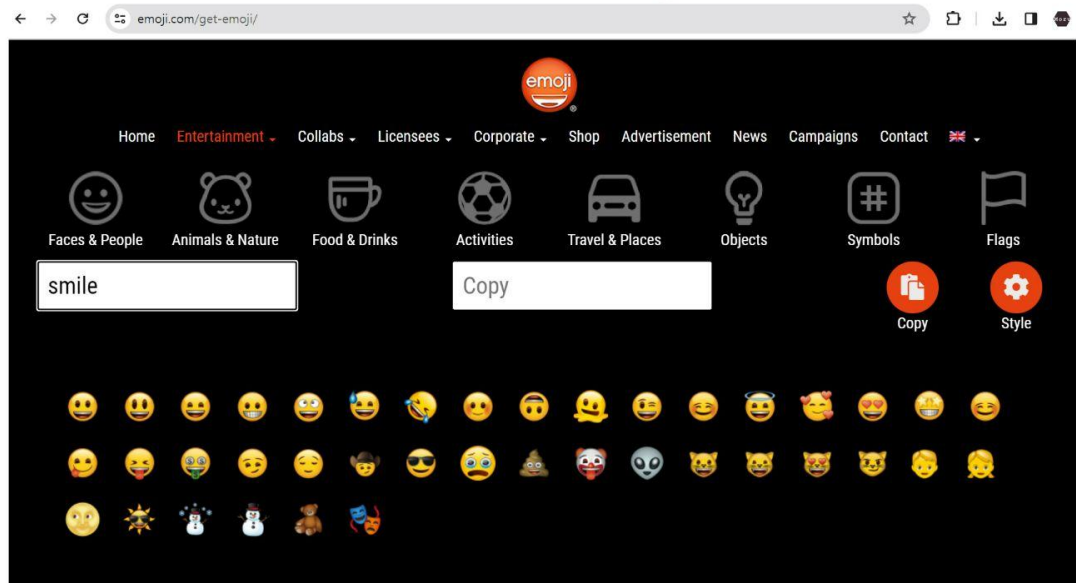
Products related to this item

Sponsored

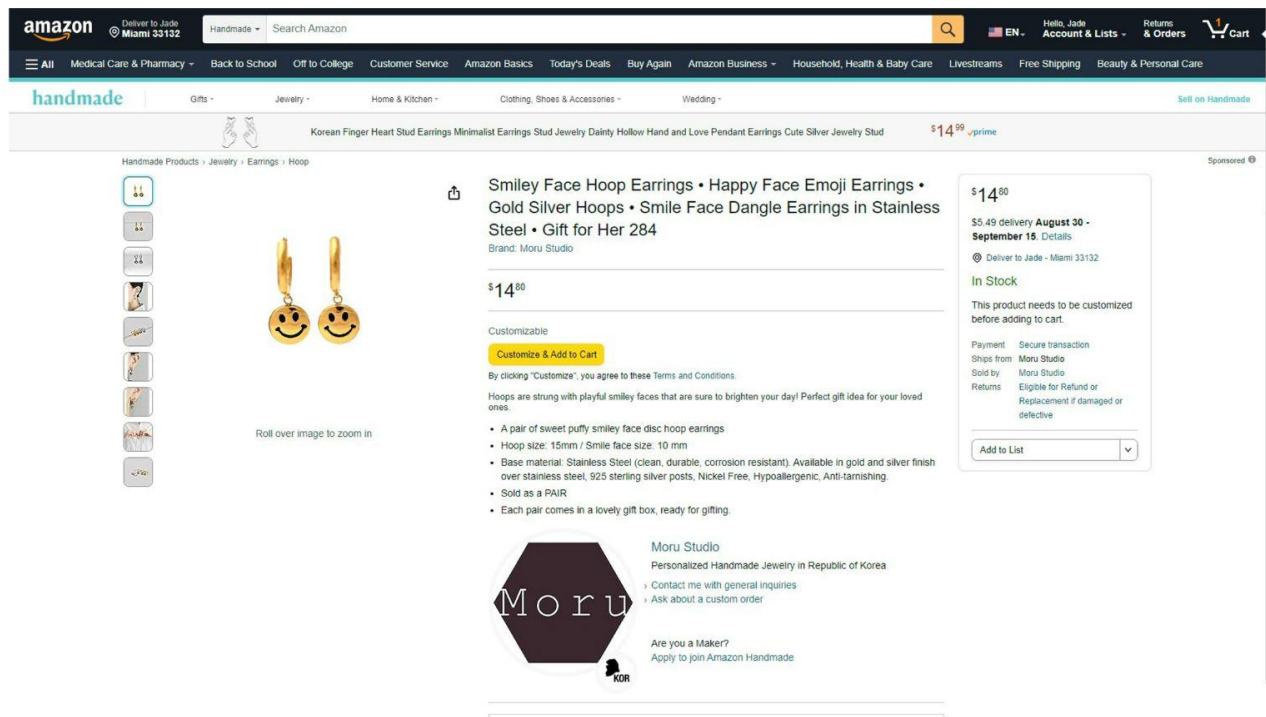
Page 1 of 35

File_2_Product Comparison_23-cv-14925_Amazon_Moru Studio

emoji



Moru Studio



File_3 Confirmation of Product Removal_23-cv-14925_Amazon_Moru Studio



Rosa Lee <morustudio@gmail.com>

Your Amazon.com selling account

Amazon <no-reply@amazon.com>
Reply-To: Amazon <no-reply@amazon.com>
To: morustudio@gmail.com

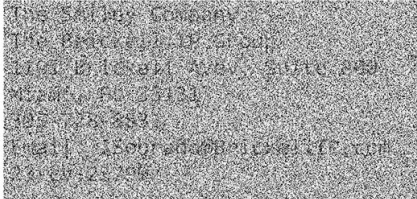
Wed, Nov 15, 2023 at 5:24 PM



Hello from Amazon,

We are writing to inform you that we removed some of your listings and your disbursements from your seller account have been placed on hold. We took this action in accordance with a Temporary Restraining Order issued by a federal court. Items that infringe another party's copyright, patent, trademark, design right, database right, or other intellectual property or other proprietary right are prohibited. For more information on this policy, search on "Prohibited Content" in seller Help.

To resolve this dispute, we suggest that you contact the rights owner directly:



If you resolve this matter with the rights owner, please advise them to contact us to withdraw their complaint.

Please be advised that we are not in a position to provide any further information regarding this action, nor to address any messages directed to us in appeal. We may not respond to further emails about this issue.

Failure to comply with our policies may result in the removal of your Amazon.com selling privileges.


We appreciate your cooperation.

Listings Removed: B0BRJ4D5XX

Sincerely,
Seller Performance Team
Amazon.com

File_4_Shop Front Page_23-cv-14925_Amazon_Moru Studio


amazon.com/dp/B01EL59OJW/ref=hnd_dp_smp_img



Moru Studio ★★★★★ (79)
Personalized Handmade Jewelry in Republic of Korea

I love discovering the beauty in simple things.
– Moru Studio

- › [Contact me with general inquiries](#)
- › [Ask about a custom order](#)
- › [See all of my Handmade products](#)



About Moru Studio

I'm the owner/designer and a jewelry maker of Moru Studio, who has been making jewelry since 2009 as a hobby. I've been always fascinated by making up something by hand so I first started making my own earrings, brooches, necklaces for fun. What I love most about jewelry is that it is meaningful and timeless. It is so small and delicate yet has the power to hold many stories and memories. This is how Moru Studio is born. A personalized piece of jewelry would make perfect gifts for your loved ones and bridesmaids. I wish my jewelry can be something meaningful and special to every customer with a little smile on their face. I hope you will find something special and meaningful that catches your eye. Thank you for stopping by. xx Rosa

Customer Reviews of Moru Studio
Feedback Rating: ★★★★★
4.5 stars over the past 12 months (79 ratings)
[Detailed Seller Information](#)
[Shipping and Policy info](#)
[See all of Seller's Handmade items](#)

File_5_Store Address_23-cv-14925_Amazon_Moru Studio

amazon.com/sp?_encoding=UTF8&seller=A2M67XD0ZJPBUX&ref=hnd_adp_sellerinfo

Amazon US | 경쟁사 | 네이버 MYBOX | Gmail | inches to centimet... | 미국 달러 : 네이버페... | 지도 | 번역 | S Luxury fashion & i... | Moru Studio

Moru Studio
Visit the Moru Studio storefront
★★★★★ | 87% positive lifetime (79 total ratings)
Protected by A-to-z Guarantee

Return & Refund Policies
To get information about the Return and Refund policies that may apply, please refer to Amazon's [Return](#) and [Refund](#) policy.
To initiate a return, visit [Amazon's Online Return Center](#) to request a return authorization from the seller.
For any issues with your return, if the product was shipped by the seller, you can get help [here](#).

Amazon's A-to-z Guarantee
The Amazon A-to-z Guarantee protects you when you purchase items sold and fulfilled by a third party seller. Our guarantee covers both the timely delivery and the condition of your items. If either are unsatisfactory, you can report the problem to us and our team will determine if you are eligible for a refund.
[See full details](#)

Detailed Seller Information
Business Name: Sun Studio - Rosa Lee
Business Address:
8, Baekseokdong 1-gil
Seoul
Jongno-gu
03020
KR

File_6_INFORM Consumers Act Verified by Amazon_23-cv-14925_Amazon_Moru Studio

sellercentral.amazon.com/performance/dashboard

amazon seller central | Moru Studio | United States

Search

Add Products Campaign Manager

Account Health Customer Service Performance Product Policy Compliance Shipping Performance Reports Eligibilities Voice of the Customer

Account Health [Leave Feedback](#)

To sell on Amazon, you must adhere to the below performance targets and policies. Help us reach you in the instance a critical event occurs that affects your ability to sell by entering your emergency contact number [here](#). [Report abuse](#) of Amazon policies.

Account Health Assurance

A new benefit for selling partners who consistently achieve a high Account Health Rating.

[See what it takes to qualify >](#)

Need help?

Speak to an Account Health Specialist. To learn more about the Account Health Support Team, click [here](#)

[Call me now](#)

Customer Service Performance

	Seller Fulfilled	Fulfilled by Amazon
Order Defect Rate	0%	N/A
Target: under 1%	0 of 224 orders 60 days	

Order Defect Rate consists of three different metrics:

- Negative feedback 0% N/A

[FEEDBACK](#)

Policy Compliance Healthy

Account Health Rating 208

This rating reflects your adherence to Amazon's selling policies. [Learn more.](#)


Suspected Intellectual Property Violations	0
Received Intellectual Property Complaints	0
Product Authenticity Customer Complaints	0




Shipping Performance


	Seller Fulfilled
Late Shipment Rate	0%
Target: under 4%	0 of 83 orders 30 days
Pre-fulfillment Cancel Rate	0%
Target: under 2.5%	0 of 9 orders 7 days
Valid Tracking Rate	N/A
Target: over 95%	

File_7_First Registered on Amazon_23-cv-14925_Amazon_Moru Studio

amazon.com/dp/B01EL59QJW/ref=hnd_dp_smp_img





Important information

To report an issue with this product or seller, [click here](#).

Product details

Date First Available : [April 21, 2016](#)

ASIN : B01EL59QJW

[illegible]

File_10_Filing Date of Trademark_23-cv-14925_Amazon_Moru Studio

Generated on: This page was generated by TSDR on 2024-01-02 11:50:15 EST

Mark: EMOJI

Emoji

US Serial Number: 98230525

Application Filing Date: Oct. 19, 2023

Register: Principal

Mark Type: Trademark

TM5 Common Status
Descriptor:

LIVE/APPLICATION/Awaiting Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and has not yet been assigned to an examiner.

Status: New application awaiting assignment to an examining attorney. [See current trademark processing wait times](#) for more information.

Status Date: Oct. 25, 2023

Mark Information

Mark Literal Elements: EMOJI

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Foreign Information

Foreign Registration Number: 017942513

Foreign Registration Date: Apr. 12, 2014

Foreign Application/Registration Country: EUROPEAN UNION

Foreign Expiration Date: Aug. 09, 2033

Goods and Services**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *...* identify additional (new) wording in the goods/services.

For: Jewellery, clocks, wristwatches and watches

International Class(es): 014 - Primary Class

U.S Class(es): 002, 027, 028, 050

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: Yes

Filed 44E: Yes

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: emoji company GmbH

Owner Address: Necklenbroicher Strasse 52-54
Meerbusch GERMANY 10128

Legal Entity Type: gesellschaft mit beschränkter haftung (gmbh)

State or Country GERMANY
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Marijan Hucke

Docket Number: 03002

Attorney Primary m.hucke@huckelaw.com
Email Address:Attorney Email Yes
Authorized:

Correspondent

Correspondent MARIJAN HUCKE
Name/Address: HUCKE & SANKER PLLC
1732 1ST AVE STE 27500
NEW YORK, NEW YORK UNITED STATES 10128

Phone: 646-396-0410

Fax: 6463960411

Correspondent e- m.hucke@huckelaw.com e.sal@huckelaw.com
mail:Correspondent e- Yes
mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 25, 2023	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	
Oct. 23, 2023	NEW APPLICATION ENTERED	

TM Staff and Location Information

TM Staff Information

TM Attorney:

Law Office Not Assigned
Assigned:

File Location

Current Location: NEW APPLICATION PROCESSING

Date in Location: Oct. 25, 2023